directors. He recognised the existence of the corporation, and is estopped from denying it; but he did not recognise those persons as directors, and the acts of other persons, without his consent, cannot bind him.

If I promise to pay money upon the demand of A., I deny that I am bound to pay it upon the demand of B., who falsely claims to be the attorney of A., although B. may have acted as such attorney *de facto* in a great many instances, and may have been recognised as such attorney by a great many very respectable people.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

COURT OF APPEALS OF NEW YORK.[2]

SUPREME COURT OF VERMONT.[3]

SUPREME COURT OF MICHIGAN.[4]

Bills and Notes.

Indorser not notified—Offer to pay or to compromise.—An indorser who had not been legally notified of the dishonor of the paper, made to the assignees of the bank owning it, an offer to pay the amount in the bills of the bank, which were then largely depreciated. The assignees refused to receive this payment. *Held*, that this was to be regarded as an offer to compromise only, and not such an offer to pay as could be construed into a waiver of notice: *Newberry* vs. *Trowbridge*, 13 Mich.

Check.

When an Assignment—Donatio causa mortis.—The holder of a check cannot usually have any claim against the drawers, unless it is accepted. And if it can operate in any case as an assignment of the fund it must be irrevocable, and upon sufficient consideration. A check drawn by a person *in extremis*, designed to operate in lieu of a testamentary instrument, and not paid by the drawer, gave no right of action against the drawer, and could not operate to assign the fund, being revocable and made without consideration. A check of this kind is not valid as a *donatio causa mortis*, and becomes void at the drawer's death: *Second National Bank* vs. *Williams*, 13 Mich.

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[1] From J W. Wallace, Esq., Reporter; to appear in Vol. 2 of his Reports

[2] From Joel Tiffany, Esq., Reporter; to appear in Vol. 1 of his Reports.

[3] From W. G. Veazey, Esq., Reporter; to appear in 36 Vermont Reports.

[4] From Hon. T. M. Cooley, Reporter; to appear in 13 Michigan Reports.

Corporation.

Stockholder may be permitted in Equity to become a party defendant for special purposes.—Stockholders of a corporation, who have been allowed to put in answers in the name of a corporation, cannot be regarded as answering for the corporation itself. In a special case, however, where there is an allegation that the directors fraudulently refused to attend to the interests of the corporation, a court of equity will, in its discretion, allow a stockholder to become a party defendant, for the purpose of protecting—from unfounded and illegal claims against the company—*his own interest* and the interest of such other stockholders as choose to join him in the defence: *Bronson et al.* vs. *La Crosse and Milwaukie Railroad Company et al.*, 2 Wall.

Constitutional Law.

The Legal Tender Act.—Congress had full power to pass the act making treasury notes a legal tender in the payment of private debts: *Van Husan* vs. *Kanouse*, 13 Mich.

The Stamp Act.—A person *in extremis*, being the holder of a thirty-day draft on a banker, which was not sufficiently stamped, made a gift of it to her mother in August 1863. After the donor's death her administrator, treating the draft (which had not been paid), as void, brought suit against the drawer for the original consideration. The drawer defended in the interest of the donee. On the trial, after the Act of Congress of June 30th 1864 took effect, the draft was produced, and stamps to a sufficient amount placed upon it and cancelled. It was *held*, that the draft was thereby made valid under said Act of Congress, and that its validity related to the time when it was drawn, and that consequently plaintiff could not recover: *Gibson* vs. *Hibbard*, 13 Mich.

Limitation Laws—Statute, when to take effect.—The legislature has full control over the subject of limitation laws, subject only to the principle that a reasonable time must be allowed in which to bring suits. As to what is a reasonable time that is to be determined by the legislative judgment, and the courts are not at liberty to review its action: *Price* vs. *Hopkin*, 13 Mich.

A legislative act, however, which should be retrospective in its operation, and which should cut off all remedy for the lapse of time which had occurred before its passage, would not be a limitation act, but would be unconstitutional, because depriving persons of their rights without due process of law: *Id.*

A statute passed to take effect at a future day, is to be understood as speaking from the time it goes into operation, and not from the time of its passage. The intervening time is allowed to enable the public to become acquainted with its provisions, and they are not compelled during that period to govern their actions by its provisions: *Id.*

Act No. 227 of 1863 (Laws of 1863, p. 388), amending the limitation law relating to real property, as embodied in the compiled laws, was passed March 1st 1863, to take effect January 1st 1864. No force or effect can be given to the law before the time when it was ordered by the legislature to go into operation, and it cannot constitutionally be applied to any case where its effect would be to cut off an existing right of action the moment it came into force: *Id.*

Where, therefore, by the law as it stood December 31st 1863, a person was allowed 15 years in which to bring suit for the recovery of a parcel of land claimed by her, and said Act of 1863, if applied to the case, would have the effect to prohibit at once any suit for its recovery, it was *held*, that the act could not constitutionally apply to the case: *Id.*

Limitation of Actions—Power of Legislature to make a Tax Deed conclusive.—The statute declaring that lands bid off by the state, and not disposed of for five years, shall vest in the state an absolute title, in fee simple, is not a statute of limitations, and is void, as taking private property without due process of law. (L. 1858, p. 192, sec. 135): *Groesbeck* vs. *Seeley*, 13 Mich.

Limitation laws always must operate to compel a party to enforce or prosecute his cause of action within some reasonable time. But a party who is in the enjoyment of his rights, cannot be compelled to take measures against an adverse claimant, and a law taking away the rights of a party in such a case is an unlawful confiscation, and in no sense a limitation law: *Id.*

An auditor's deed of state tax lands purchased at his office, is *primâ facie* evidence of regularity and legality, but not conclusive; and irregularity may be shown to impeach the tax-title: *Id.*

Deed.

Acknowledgment before Party in interest—Consideration—Stamp.—A grantee, or one for whose immediate use a grant is made, cannot take the acknowledgment thereof. But where no such interest appears on the face of the deed, no trust results to the party from whom the consideration passed, and who procured the deed to be made, and he can have no rights, unless by virtue of some instrument valid under the Statute of Frauds: *Groesbeck* vs. *Seeley*, 13 Mich.

Evidence is admissible to prove that no consideration passed between the parties to a deed, and that it was procured by, and intended to operate in favor of another, as such evidence furnishes a reason for determining the amount of stamps requisite by the value of the interest conveyed, instead of by the consideration: *Id.*

Equity.

Trusts—Enforcement of resulting Trust by Creditors.—The enforcement of pure trusts is one of the original and inherent powers of a court of equity, and, by force of the state constitution, this power is now vested in the Supreme Court: *McCartney* vs. *Bostwick*, 1 Tiffany.

The jurisdiction of the court in respect to creditors' bills, is *auxiliary* to the remedies of the creditor at law, and can only be invoked after performance of the statutory condition that the remedies at law shall first be exhausted: *Id.*

In cases of pure trust, the party ordinarily has no remedy at law, and may resort *in the first instance* to a court of equity: *Id.*

Previous to the revision of our statutes, when land was purchased in the name of one, with the money of another, save in a few exceptional cases, the law declared a resulting trust in favor of the party paying the consideration: *Id.*

By the statute of uses and trusts, this rule was abolished, and an independent resulting trust was declared in favor of creditors, which may be enforced in the first instance in a court of equity, where nothing has been done or omitted by the creditors, tending to impair their rights, and where the design and effect of the transaction has been to defraud them of their remedies at law: *Id.*

ESTOPPEL.

In pais.—Where the husband of a woman sold a horse belonging to her without authority, and she was informed of the sale before payment had been made, and had a convenient opportunity to inform the purchaser of her rights, but neglected to do so until after he had made payment to the husband, it was *held*, that she was estopped from thereafter asserting title to the horse against a mortgagee of the purchaser: *Dann* vs. *Cudney*, 13 Mich.

EVIDENCE.

Plans.—In the trial of actions involving title to lands, which involve an inquiry in reference to lines, with the usual accompaniment of marked trees and monuments, it is *held*, that a plan showing the relative position of the various lines, objects, &c., upon which the party relied, and verified by the person making it as correctly made, though not substantive independent evidence of itself, may yet be allowed to be exhibited to the jury, and used in evidence in connection with the evidence of the person making it, and all the evidence in the case relative to the various objects shown upon it, and may be taken by the jury when they retire to make their verdict: *Wood et al.* vs. *Willard et al.*, 36 Vt.

Where the controversy between the parties in a suit is in respect to the location of the division line between their lands, and not in respect to the character and extent of the possession of their predecessors in title, they are not at liberty to prove the declarations of their respective grantors, made at the time of the purchase, as to where the true line was: *Id.*

EXECUTION.

Statutory Notice to Executor.—Under a statute which authorizes execution to issue against the lands of a deceased debtor, *provided* that the plaintiff in the execution shall give notice to the executor or administrator, *if there be any*, of the decedent,—a sale without either such notice or *scire facias*, as at the common law (or proof that there were no executors?), is void. On a question of title, *under this statute*, the burden of proving that his purchase was after due notice, rests with the purchaser; the record of execution and sale not of themselves raising a presumption that notice was given: *Ransom* vs. *Williams*, 2 Wall.

Defective Levy.—Where a town clerk's certificate and an officer's return disagree as to the time when a levy of execution was recorded in the town clerk's office, the certificate of the clerk will prevail: *Ellison* vs. *Wilson*, 36 Vt.

If an execution is actually levied on the land attached on mesne process, and the appraisal made within five calendar months after the rendition of final judgment, but the levy is not recorded in the town clerk's

office until after the five months have expired, the levy will not be in season to connect it with the attachment lien: *Id.*

There is no analogy between an unrecorded conveyance and a defective levy. A deed passes the title between the parties, and recording is only necessary to give notice of it to the world; while a levy, so long as it lacks any of the statute requisites, is wholly insufficient to affect the title even as between the parties: *Id.*

JURY.

Challenge to Juror: what sufficient cause.—A person summoned as a juror in a criminal case was challenged for cause, and asked by counsel for defendant if he had formed an opinion as to the guilt or innocence of the defendant, and replied: "I have formed a partial opinion from rumors in the street, but not a positive opinion." No further inquiries were made, and it was *held*, that the challenge was not sustained: *People* vs. *Holt*, 13 Mich.

LIMITATION.

Adverse Possession.—The defendant not having performed a contract for the purchase of land so as to be legally entitled to a conveyance, if he did in fact set up a claim of title in himself, it could not affect the plaintiff until distinct knowledge of such adverse claim was brought home to him: *Robinson, Adm'r.*, vs. *Sherwin, Ex'r.*, 36 Vt.

OFFICE.

Appointment to Office, when a removal of Incumbent.—The Common Council of Detroit, having power to fill an office, the term of which was fixed by statute at two years, and having also the right to remove the incumbent at pleasure, made an appointment for one year only, and at the end of that period made a new appointment without, in terms, removing the incumbent. *Held*, that the restriction of the first appointment to one year was void, and that the appointee was entitled to hold for the full term: that he could not be removed without an intent to remove him: that the circumstances did not show such intent, but showed only that a new appointment was made because the Councils supposed the force of the original one was spent; and that consequently the first appointee continued the lawful incumbent: *Stadler* vs. *Detroit City*, 13 Mich.

PARTNERSHIP.

Contract against public policy—Operations completed—Refusal of Partner to Account—Fiduciary relations between Partners.—After a partnership contract confessedly against public policy has been carried out, and money contributed by one of the partners has passed into other forms,—*the results* of the contemplated operation completed,—a partner, in whose hands the profits are, cannot refuse to account for and divide them on the ground of the illegal character of the original contract: *Brooks* vs. *Martin*, 2 Wall.

Where one partner, who is in sound health, is made sole agent of the partnership by another, who is not, and who relies on him wholly for

true accounts, and the party thus made agent manages the business at a distance from the other, communicating to him no information, the relation of partners, whatever it may be in general, becomes fiduciary, and the law governing such relations applies: *Id.*

PATENT.

Claim for "any mode of combining" certain devices not good.—A claim for a combination of several devices, so combined together as to produce a particular result, is not good as a claim for "*any mode of combining* those devices which would produce that result," and can only be sustained as a valid claim for the peculiar combination of devices invented and described. *Burr* vs. *Duryee*, 1 Wall. 553, affirmed and applied: *Case* vs. *Brown*, 2 Wall.

PHYSICIAN.

Medical Ethics—Admission to corporate franchises—Mandamus.—Mandamus is the appropriate remedy to compel a county medical society to admit an applicant entitled to membership: *The People ex rel. Bartlett* vs. *The Medical Society of the County of Erie*, 1 Tiffany.

A licensed physician, having the prescribed qualifications, cannot be excluded from the franchise on the ground that he did not conform to the conventional rules of the society at a period antecedent to his application: *Id.*

The code of medical ethics, adopted by the by-laws of a county society, is obligatory on members alone, and its non-observance, previous to membership, furnishes no legal cause either for exclusion or expulsion: *Id.*

When a party, having a clear presumptive title, claims admission to the exercise of a corporate franchise, the right of immediate expulsion should be clear and unquestioned to justify the rejection of the claim: *Id.*

The general policy of the law is opposed to sharp and summary judgment, where the party whose rights are involved has no opportunity to be heard: *Id.*

PRACTICE.

Trial.—Control of the Court over disparaging questions asked of a Witness.—The court in which a cause is tried, in the exercise of its discretion, may exclude disparaging questions *not relevant to the issue*, on the cross-examination of a witness, though put for the avowed purpose of impairing his general credit; and this may be done on the objection of the party, without putting the witness to his claim of privilege: *Great Western Turnpike Co.* vs. *Loomis*, 1 *Tiffany.*

In the exercise of this discretion, such questions should be allowed, when there is reason to believe it may tend to promote the ends of justice; but they may properly be excluded, when a disparaging course of examination seems unjust to the witness, and uncalled for by the circumstances of the particular case: *Id.*

On questions of this nature, the decision of the original tribunal is not subject to review, unless in cases of manifest abuse or injustice: *Id.*

REBELLION.

Status of loyal Southerners obliged to remain among the Rebels, and of their Property on the re-establishment of Peace—Cotton considered as a subject for capture, though private Property—Jurisdiction of the Federal Courts, sitting in Admiralty, over captures on Land.—The principle, that personal dispositions of the individual inhabitants of enemy territory as distinguished from those of the enemy people generally, cannot, in questions of capture, be inquired into, applies in civil wars as in international. Hence, all the people of any district that was in insurrection against the United States in the Southern rebellion, are to be regarded as enemies, except in so far as by action of the government itself that relation may have been changed: *Mrs. Alexander's Cotton*, 2 Wall.

Our government, by its Act of Congress of March 12th 1863 (12 Stat. at Large 591), to provide for the collection of abandoned property, &c., does made distinction between those whom the rule of international law would class as enemies; and, through forms which it prescribes, protects the rights of property of all persons in rebel regions who, during the rebellion, have, in fact, maintained a loyal adhesion to the government; the general policy of our legislation during the rebellion having been to preserve, for *loyal* owners obliged by circumstances to remain in rebel states, all property or its proceeds which has come to the possession of the government or its officers: *Id.*

Cotton in the Southern rebel districts—constituting as it did the chief reliance of the rebels for means to purchase munitions of war, an element of strength to the rebellion—was a proper subject of capture by the government during the rebellion on general principles of public law relating to war, though private property; and the legislation of Congress during the rebellion authorized such captures: *Id.*

Property captured *on land* by the officers and crews of a naval force of the United States, is not "maritime prize;" even though, like cotton, it may have been a proper subject of *capture* generally, as an element of strength to the enemy. Under the Act of Congress of March 12th 1863, such property captured during the rebellion should be turned over to the treasury department, by it to be sold, and the proceeds deposited in the national treasury, so that any person asserting ownership of it may prefer his claim in the Court of Claims under the said act; and on making proof to the satisfaction of that tribunal that he has never given aid or comfort to the rebellion, have a return of the net proceeds decreed to him: *Id.*

TENDER.

Lien of Mortgage discharged thereby.—Where the mortgagor of lands, after the mortgage falls due but before foreclosure, tenders to the holder the full amount due, which the latter refuses to receive, the lien of the mortgage is discharged thereby: *Van Husan* vs. *Kanouse*, 13 Mich.